



FREDERICK COUNTY PLANNING COMMISSION

May 12, 2021

TITLE: TowerCom Butterfly Lane

FILE NUMBER: SP 261692, (A261690, F261691)

REQUEST: Site Development Plan Approval

The Applicant is requesting Site Plan approval to construct a 110 foot monopole cell tower at 6249 Ed Crone Lane.

PROJECT INFORMATION:

ADDRESS/LOCATION: 6249 Ed Crone Lane
TAX MAP/PARCEL: Tax Map 76, Parcel 38
COMP. PLAN: Agricultural
ZONING: Agricultural
PLANNING REGION: Frederick
WATER/SEWER: NPS

APPLICANT/REPRESENTATIVES:

APPLICANT: Joseph Schakola
OWNER: TowerCom
ENGINEER: Morris, Ritchie Associates Inc.

STAFF: Jerry Muir, Principal Planner I

RECOMMENDATION: Conditional Approval

ATTACHMENTS:

Exhibit 1 – BOA Findings and Decision Letter
Exhibit 2 – Aerial Photo of site
Exhibit 3 – Site Photos
Exhibit 4 – Supporting Documents

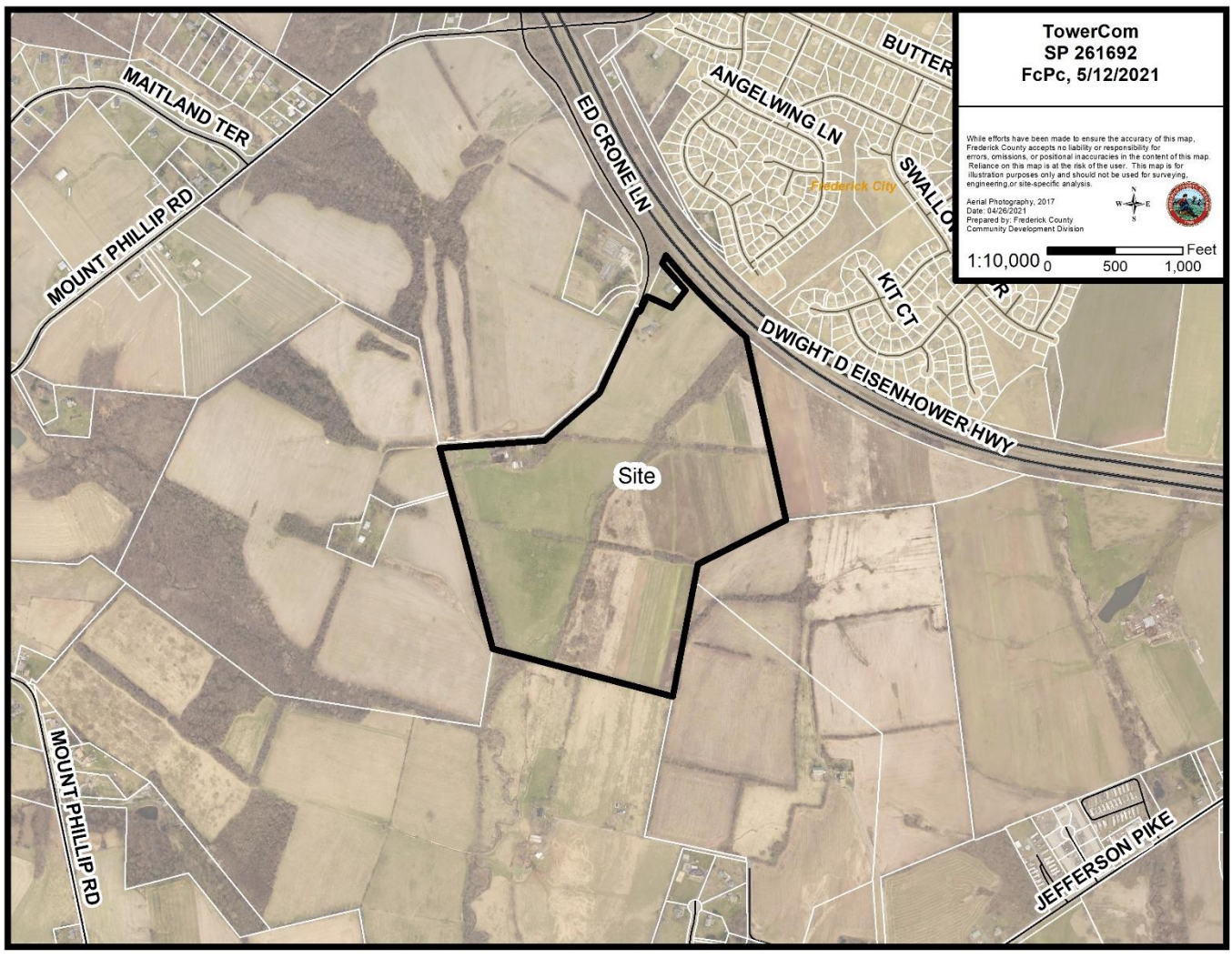
STAFF REPORT

ISSUE

The Applicant is requesting Site Plan approval to construct a 110' monopole cellular communications tower with a generator pad and ground based support equipment within a 3,600 SF fenced compound as part of a 10,000 SF lease area. The site will be serviced by an existing farm lane and will provide one parking space for maintenance vehicles. There are four additional carrier spaces shown on the plan for future use by other providers

The proposed use is being reviewed under §1-19-5.310 (Use Table) & 1-19-8.332 (Communications Towers in an Agricultural District) and 19-8.420 (Communication Towers) of the Zoning regulations.

Figure 1: Site Vicinity Map – Aerial Image



BACKGROUND

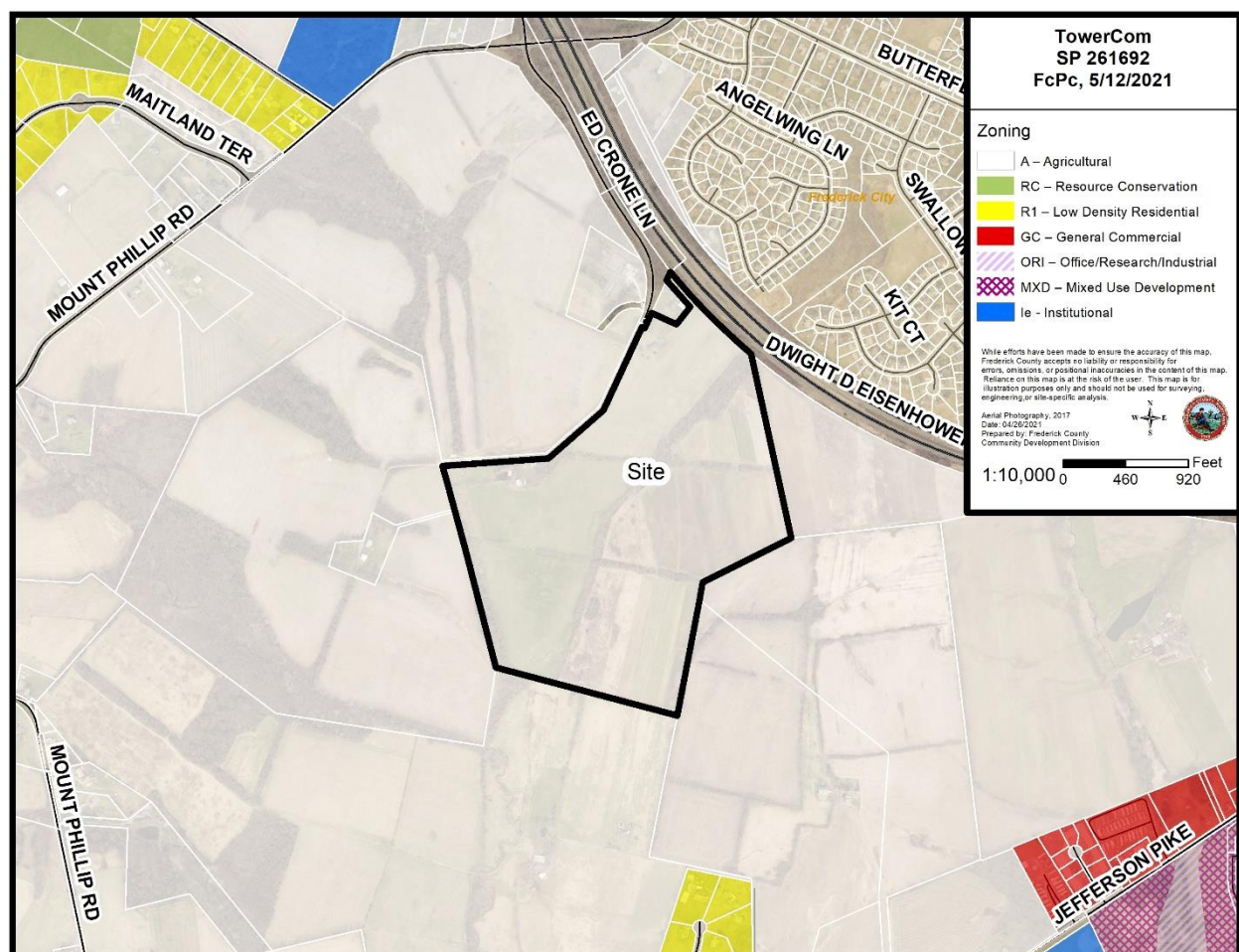
Development History: The site is in the middle of a large farm and there is no history of development of the property.

A requirement of a cell tower application is review and approval of a Special Exception by the Board of Appeals as a Special Exception per Section 1-19-3.210. On September 24, 2020 the BOA, hearing case B-20-12, approved the Special Exception and their findings and decisions are included as an attachment to this report.

Existing Site Characteristics: The Site is a relatively open field with existing tree lines throughout the area. There are wetlands, floodplain, and streams on the property but not within the area of development.

Surrounding Land Uses: The Site adjoins agricultural zoned land to the east, west and south. It abuts I70 to the north, approximately 1300+ feet away from the tower location. There are approximately five single family dwellings on Ed Crone Lane in front of this site.

Figure 2: Zoning Map



ANALYSIS

Summary of Development Standards Findings and Conclusions

The site plan meets all dimensional/bulk standards and the specific requirements of Section 19.8.332 and 19-8.420.

Detailed Analysis of Findings and Conclusions

Site Development Plan Approval shall be granted based upon the criteria found in §1-19-8.332 and 1-19-8.420 Specific Use Regulations of the Frederick County Zoning Ordinance.

Site Development §1-19-3.300.4 (A): *Existing and anticipated surrounding land uses have been adequately considered in the design of the development and negative impacts have been minimized through such means as building placement or scale, landscaping, or screening, and an evaluation of lighting. Anticipated surrounding uses shall be determined based upon existing zoning and land use designations.*

Findings/Conclusions

§1-19-8.332 Communications Towers in Ag Districts: The requirements under 1-19-8.332 apply to the Special Exception process. As documented in Exhibit 1, the BOA found that the Special Exception criteria has been met.

19-8.420 Communication Towers: Staff finds the applicant has met the following:

- A. ***Applicant shall be responsible for tower maintenance.*** The applicant has attested the owner will be responsible for the tower maintenance.
- B. ***If unused for six months the tower certificate will terminate and the tower shall be removed within 90 days.*** It is noted on the plan that should the use cease for six months the certificate will terminate.
- C. ***All towers shall be designed for the colocation of at least two carries.*** The colocation requirement is met by having additional space for up to four other users on the tower.
- D. ***Tower height may exceed the maximum height in the zone provided setbacks are met and a determination that it will have no substantial change in the character of the area.*** The tower at 110' will exceed the height requirement of the zone but will have no substantial impacts on the surrounding area. The BOA granted a height of up to 110' at the Special Exception hearing.
- E. ***All applications shall include justification, propagation studies and photos simulations.*** The required studies were submitted and approved by the BOA as part of the Special Exception process. They are attached to this report as Exhibit # 4, under separate cover.
- F. ***Screening and fencing may be required during the review process.*** Fencing will be constructed around the tower compound. Existing tree lines and forest rows will provide additional screening.
- G. ***The appearance of the tower shall be minimized using available technology.*** The tower is a monopole and will not be painted.
- H. ***No lighting is to be placed on the tower unless required by the FAA.*** No light will be at the top unless required by the FAA.

- I. **Monopoles are the preferred tower type in Frederick County.** The tower is a monopole which is the preferred type in Frederick County.
- J. **Tower sites shall be identified by a sign identifying the owner and each provider with a phone contact for emergency notice.** The site plan documents that a six foot sign will be placed on the fencing with owner, users and emergency contact information.
- K. **Site plan approval by the Planning Commission in accordance with the site plan regulations is required.**
- L. **No towers are permitted within land designated or eligible for historic designation.** The site is not within a historic district or area. Report is attached.
- M. **Copies of all reports shall be included in the application.** All the required reports have been submitted and are included in this report as Exhibit #4 under separate cover.
- N. **Towers should be sited adjacent to areas of mature vegetation and located down slope from ridge lines.** The tower is in the middle of a large tract of farm land located in proximity to the stream valley. The ground rises out from the site location.
- O. **All applications shall address how the site addressed impacts on County preservation areas.** No significant visual impact is created by this location of the tower. See Items B, C & G under the separate cover (Exhibit 4).
- P. **Towers may be permitted in MM and MXD zones with Planning Commission approval.** The site is zoned agricultural and was approved as a Special Exception by the BOA.
- Q. **Towers in existence as of the date of this Ordinance are not required to comply.** This tower is not preexisting.
- R. **Minimum setback from residential property zoning shall be 300'.** The tower setbacks to the agricultural lot lines are north 1221', east 1050', south 1664' and west 471'.

Site Development §1-19-3.300.4 (A): Existing and anticipated surrounding land uses have been adequately considered in the design of the development and negative impacts have been minimized through such means as building placement or scale, landscaping, or screening, and an evaluation of lighting. Anticipated surrounding uses shall be determined based upon existing zoning and land use designations.

Findings/Conclusions

- 1. **Dimensional Requirements/Bulk Standards §1-19-6.100 & 1-19-8.480:** The proposed Site Development Plan adheres to the required lot dimensions for the cell tower as noted in 19.8.332 and 8.420. The required setbacks exceed the minimum 300'.

Findings/Conclusions

Access/Circulation & Pedestrian Circulation and Safety §1-19-6.220 (G): Access to and from the Site is existing and adequate. There is no pedestrian access to the site.

- 1 **Connectivity §1-19-6.220 (F):** Site connectivity is adequate with the farm lane. As noted on the plan only infrequent trips are expected to the site.
- 2 **Public Transit:** Public transit does not serve the Site.
- 3 **Vehicle Parking §1-19-6.220:** Parking is provided for one service vehicle on the site, which should be adequate for this use.
- 4 **Loading §1-19-6.210. (B):** The van space will act as the loading space in the case of this site plan. In this case staff believes the facility will not require a separate loading space and none are provided.
- 5. **Bicycle Parking:** Bike racks are not required for this use.

Public Utilities §1-19-3.300.4 (C): Where the proposed development will be served by publicly owned

community water and sewer, the facilities shall be adequate to serve the proposed development. Where proposed development will be served by facilities other than publicly owned community water and sewer, the facilities shall meet the requirements of and receive approval from the Maryland Department of the Environment/the Frederick County Health Department.

Findings/Conclusions

1. **Public Water and Sewer:** The Site is classified as NPS. No utilities are proposed other than electric.

Natural features §1-19-3.300.4 (D): *Natural features of the site have been evaluated and to the greatest extent practical maintained in a natural state and incorporated into the design of the development. Evaluation factors include topography, vegetation, sensitive resources, and natural hazards.*

Findings/Conclusions

1. **Topography:** The Site is sloping gently to the stream valley.
2. **Vegetation:** Other than tree lines and hedge rows that exists to the north and south there is no significant vegetation.
3. **Sensitive Resources:** There is FEMA floodplain, flooding soils, wetlands, and streams on the property but not within the area of disturbance. All required environmental setbacks are met. The existing access farm lane does cross through an area of wetlands, but this is a preexisting condition and no widening of this lane will be permitted within the wetland.
4. **Natural Hazards:** There are no natural hazards on the site.

Other Applicable Regulations

Stormwater Management – Chapter 1-15.2: SWM will be addressed prior to the permit phase. The site plan has been approved by Engineering and SWM will be further reviewed at the Improvement Plan stage.

APFO – Chapter 1-20:

Schools: The Project is non-residential and therefore not subject to schools testing.

Water and Sewer: This Project Site is classified as NPS.

Road Improvements This development generates less than 6 trips during the peak hour of the adjacent street and is therefore exempt from APFO testing and contribution to existing area road escrow accounts. (§1-20-12(H)). The proposed site will require infrequent access (4 or fewer trips per year) for maintenance purposes.

Forest Resource – Chapter 1-21: The Applicant has submitted a Combined Preliminary/Final Forest Conservation Plan. The limit of disturbance contains no forest or specimen trees. The Applicant proposes to mitigate the afforestation requirement by payment of fee-in-lieu.

Conditions of Approval

FRO mitigation (payment of fee-in-lieu) must be provided prior to applying for grading permits or building permits, whichever is applied for first.

Summary of Agency Comments

Other Agency or Code Requirements	Comment
Public Works Development Review (PWDR):	Approval
Development Review Planning:	Approval
Historic Review:	Approval
Street Name Review	Approval
Health Dept.	Approval
Office of Life Safety	Approval
Traffic Engineering	Approval
APFO	Approval
FRO	Approval
State Highway	Approval

RECOMMENDATION

Staff has no objection to conditional approval of this Site Development Plan. If the Planning Commission conditionally approves the Site Development Plan, the Site Plan is valid for a period of three (3) years from the date of Planning Commission approval (valid through May 12, 2024).

Based upon the findings, conclusions, and modifications as presented in the staff report, Staff finds that the application meets or will meet all applicable Zoning, APFO, and FRO requirements once the following conditions are met:

Staff-proposed conditions of approval:

1. Address all agency comments as the plan proceeds through to completion.
2. FRO mitigation (payment of fee-in-lieu) must be provided prior to applying for grading permits or building permits, whichever is applied for first.

PLANNING COMMISSION ACTION **MOTION TO APPROVE**

I move that the Planning Commission APPROVE Site Plan SP261692, APFO A261690, and FRO F261691 per the conditions as listed in the staff report for the proposed TowerCom Butterfly Lane communications tower located at 6249 Ed Crone Lane based on the findings and conclusions of the staff report and the testimony, exhibits, and documentary evidence produced at the public meeting.

Exhibit 1: BOA Findings and Decisions

IN MATTER OF:
Josh Schakola, Verizon Wireless
6249 and 6269 Ed Crone Lane
Frederick, MD 21703

Before the Board of Appeals
Frederick County MD

Case B-20-12

* * * * *

FINDINGS AND DECISIONS

This matter came before the Board of Appeals at its September 24, 2020 meeting ("Meeting") on the application of Josh Schakola, Verizon Wireless, (hereinafter "Applicant"), requesting a Special Exception in accordance with the Frederick County Zoning Ordinance, Section, 1-19-3.210, to erect a Telecommunications Monopole tower (the "Tower") up to 150-feet and a 60-foot-by-60-foot fenced compound at the base, to house mechanical equipment for the monopole tenants in accordance with Section 1-19-8.332. Communication Towers in RC and A Districts and Sec. 1-19-8.420 Communication Towers. However, the evidence presented, as well as testimony provided by the Applicant at the hearing and answers provided to questions from the Board, only supported a tower up to 110 feet. Therefore, the application that was considered by the Board of Appeals at the Meeting, was to erect a Telecommunications Monopole tower for up to 110-feet. The property is described as 6249 and 6269 Ed Crone Lane, Frederick, MD 21703. Parcel 0038, Tax Map 76, Zoning Agricultural (A), Size 101.119 Acres

At the Meeting, the Board of Appeals made the following findings of fact based on the requirements of §1-19-3.210 (Special Exceptions) of the County Code:

All Special Exceptions are subject to the General Criteria found in Section 1-19-3.210 of the County Zoning Ordinance:

- A. An application for a special exception may be made only by persons with a financial, contractual or proprietary interest in the property for which a special exception is requested.
- B. A grant of a special exception is basically a matter of development policy, rather than an appeal based on administrative error or on hardship in a particular case. The Board of Appeals should consider the relation of the proposed use to the existing and future development patterns. A special exception shall be granted when the Board finds that:

- (1) The proposed use is consistent with the purpose and intent of the Comprehensive Development Plan and of Chapter 1-19; and

The Applicant stated that as noted in Mr. Sloan's report: Frederick County Comprehensive Plan (Amended Resolution #19-23, Effective September 3, 2019), which includes the Comprehensive Plan Map, indicates a proposed collector level street to run parallel to I-70 connecting Ed Crone Lane to Jefferson Pike. The Comprehensive Plan Map identifies the adjacent properties for agricultural/rural use with no proposed changes in land use.

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The proposed communication compound will be consistent with the intent of The Frederick County Comprehensive Plan and not change or adversely impact the character of the surrounding properties or the existing onsite structures and vegetation

- (2) The nature and intensity of the operations involved in or conducted in connection with it and the size of the site in relation to it are such that the proposed use will be in harmony with the appropriate and orderly development of the neighborhood in which it is located; and

The Applicant stated that the evidence presented will show that, of the property's 100.67 +/- acres, the Communication Tower compound and 20' wide ingress/egress and utility easement (including the 12' wide access road) takes up less than 0.4% of the site. The compound will be strategically placed to the south of an existing hedgerow that will buffer views from surrounding neighborhoods and minimize impacts. Additional hedgerows and tree cover existing around the property and within adjacent fields minimizes the need for additional screening. The leased area for the compound is a 60' x 60' area which is a small fraction of the total site. The communication equipment will be unmanned, and therefore will not generate minimal traffic to the site. Maintenance personnel will have infrequent visits (4 or fewer per year) and the site will have access for no more than one vehicle. The proposed Facility is not for human habitation. Its purpose is to house the communication equipment. The remainder of the compound is surrounded by expansive farm fields. The proposed use will not alter the use of the surrounding properties in any way. The location and the general operations of the communication compound will not change the rural character of the community.

The Applicant further stated that the level of disturbance is just over 7,500 square feet. Stormwater Management ("SWM") requirements will be addressed per the 2000 Maryland SWM Design Manual and Maryland SWM Act of 2007 during the site plan approval process. No de-forestation is required to establish the compound. There is no impact on water or sewer facilities. There is no impact on fire and rescue services. The proposed special exception does not create odors, dust, gas, smoke, fumes, vibration, glare or noise.

- (3) Operations in connection with the special exception at the proposed location shall not have an adverse effect such as noise, fumes, vibration or other characteristics on neighboring properties above and beyond those inherently associated with the special exception at any other location within the zoning district; and

The Applicant stated that the agricultural operations on the site will continue in conjunction with the compound operations. Typical agricultural operations prevalent within the area and on lands located within this zoning classification include the frequent use of large farm equipment which creates noise. For these reasons the proposed use will not have an adverse impact on neighboring properties above and beyond those inherently associated with the special exception at any other location within the zoning district.

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- (4) Parking areas will comply with the off street parking regulations of the Frederick County Zoning Ordinance and will be screened from adjoining residential uses, and the entrance and exit drives shall be laid out so as to achieve maximum safety.

The Applicant stated that off of the Ed Crone Road, a private 12' wide gravel access road placed within a 20' wide ingress/egress and utility easement is proposed to provide direct access to the compound. The proposed access road will be flanked by existing and new tree lines that provide adequate screening from adjoining properties. The compound will be situated near the east of the compound. Its location will preserve the existing rural character. No off-street parking is necessary as the equipment is unmanned and service is only anticipated to occur four or fewer times per year.

- (5) The road system providing access to the proposed use is adequate to serve the site for the intended use.

The Applicant stated that the current access drive is located off of Ed Crone Road. The unmanned equipment will have infrequent visits (4 or fewer per year) by maintenance personnel and this will be for no more than one vehicle. The current road system is adequate to serve the site for its intended use of agricultural operations and the minimum maintenance visits proposed for the communication compound.

In addition to the general requirements of §1-19-3.210 listed above, the Board made the following findings of fact related to the specific requirements for the special exception use outlined in Section 1-19-8.332. and Sec. 1-19-8.420 of the County Code.

B. The Application Meets the Required Criteria for Communications Towers in the A District Under Sections 1-19-8.332 and 1-19-8.420.2. 1.

As set forth below, the proposed application meets the requirements of a Communications Tower in the A District.

- A. The applicant and the property owner shall be responsible for maintaining the tower in a safe condition.

The Applicant stated that the Applicant and owners have entered an Option and Land Lease Agreement.

- B. The tower shall be utilized continuously for wireless communications. In the event the tower ceases to be used for wireless communications for a period of 6 months, the approval will terminate. The property owner shall remove the tower within 90 days after termination. The property owner shall insure the tower removal by posting an acceptable monetary guarantee with the county on forms provided by the office of the Zoning Administrator. The guarantee shall be for an amount equal to a cost estimate approved by the Zoning Administrator for the removal of the tower, plus a 15% contingency.

The Applicant stated that the Tower shall be utilized continuously for wireless communications. In the event the Tower ceases to be used for wireless communications for a period of 6 months, the Applicant understands that this approval will terminate. The

property owner shall remove the Tower within 90 days after termination. The property owner shall insure the Tower removal by posting an acceptable monetary guarantee with the county on forms provided by the office of the Zoning Administrator. The guarantee shall be for an amount equal to a cost estimate approved by the Zoning Administrator for the removal of the Tower, plus a 15% contingency. The Tower shall be utilized continuously for wireless communications, and the Tower will be removed within ninety (90) days after termination of the Option and Land Lease Agreement. Under the terms of this Agreement, Applicant (Lessee) is required to remove the equipment cabinet, antenna structure (except footings), equipment, conduits, fixtures and all personal property and restore the Premises (as defined therein) to its original condition, reasonable wear and tear and casualty excepted.

- C. All towers shall be designed for co-location, which shall mean the ability of the structure to allow for the placement of antennae for 2 or more carriers. This provision may be waived by the approving body if it is determined that co-location will have an adverse impact on the surrounding area.

The Applicant stated that as shown on the zoning drawings, the Communications Tower has been designed to accommodate antennas of four (4) additional carriers.

- D. The tower height may exceed the maximum height permitted within the GC, ORI, LI and GI Districts, and provided the required setbacks are met after a determination by the approving body that its visual profile and appearance would make no substantial change in the character of the area.

The Applicant stated that the height maximum in the A District is 30' (§1-19-6.100). The zoning regulations allow that "the Tower height may exceed the maximum height permitted within the RC and A Districts after a determination by the approving body that its visual profile and appearance would make no substantial change in the character of the area, provided, however, that in no event shall the maximum allowed Tower height exceed 199 feet" (§1-19-8.332(A)).

The Applicant further stated that the Communications Tower is proposed to be up to 110' tall, exceeding the 30' District maximum but well below the allowable overall maximum of 199'. The evidence (photo simulations and submitted by the Applicant showed a maximum Tower height of 110 feet. The proposed Tower has been sited among farm and agricultural uses and structures. As noted, the size of the use comprises less than 0.4% of the overall site acreage, including access, placed among barns and other existing structures, and screen by existing woods. The agricultural uses at the property will not be affected by the Tower and/or equipment. Thus, the presence of the proposed Tower would make no substantial change in the character of the area, and the height of up to 110' remains consistent with the intent of the zoning ordinance.

E. All applications for approval of communications towers shall include:

As part of the application, the Applicant has provided:

1. A Justification Statement
2. Propagation studies showing service area and system coverage in the County (maps)
3. Photo simulations of the Tower (at 100'-110') and site from at least directions of a distance no more than 1 mile.

F. As part of the site plan review, screening and fencing may be required around the base of the tower structure and any equipment buildings.

The Applicant stated that the proposed Facility and access road will be located south of an existing hedgerow that will buffer views from surrounding neighborhoods. Additional hedgerows and tree cover existing around the property and within adjacent fields minimizes the need for additional screening. Visual impacts are generally mitigated by these hedgerows and intervening farm land.

G. The appearance of the tower structure shall be minimized by the reasonable use of commercially available technology to reduce visual impact, with specific reference to size, color and silhouette properties. The decision of the approving authority shall be final.

The Applicant stated that the proposed Tower will be constructed of galvanized steel. It will not be painted unless requested.

H. No lighting is to be placed on the tower unless specifically required by the Federal Aviation Administration.

The Applicant stated that there will be no lighting placed on the Tower unless specifically required by the Federal Aviation Administration.

I. Monopoles shall be the preferred tower structure type within the county.

The Applicant stated that as a monopole, the proposed Communications Tower is consistent with the preferred Tower structure type in the County.

J. All tower sites shall be identified by means of a sign no larger than 6 square feet affixed to the equipment building or fence enclosure. Said sign shall identify the tower owner and each locating provider and shall provide the telephone number for a person to contact in the event of an emergency.

The Applicant stated that the proposed Communications Tower will comply with all signage requirements.

K. Site plan approval for the tower, access, equipment, and structures shall be by the Planning Commission in accordance with the site plan regulations specified within Chapter 1-19 of the County Code.

The Applicant stated that the site plan approval for the Tower, access, equipment, and structures shall be by the Planning Commission in accordance with the site plan regulations specified within the zoning ordinance.

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- L. No towers are permitted within land designated or eligible for designation for National Register or Frederick County Historic Districts or Sites.

The Applicant stated that the proposed Tower is not within land designated or eligible for designation for National Register or Frederick County Historic Districts or Sites.

- M. A copy of all reports including the environmental assessment, NEPA review, and SHPO review, as required by or provided to the Federal Communications Commission, shall be included as part of the application.

The Applicant stated that copies of all necessary reports, including the environmental assessment, NEPA review, and SHPO review, were included as part of the application.

- N. Towers should be sited within or adjacent to areas of mature vegetation and should be located down slope from ridge lines and towards the interior of a parcel whenever possible and only should be considered elsewhere on the property when technical data or aesthetic reasons indicate there is no other preferable location.

The Applicant stated that the Zoning Drawings and Mr. Sloan's report set out the siting of the proposed Tower. The siting is consistent with the requirements that the Tower should be sited within or adjacent to areas of mature vegetation and towards the interior of a parcel whenever possible. As noted in the report, the Facility takes advantage of the Property's proximity to I-70 and is situated toward the center of the Property to decrease visual impacts to the residential properties to the west and south. This location is also along a hedgerow maximizing the mitigation provided by this vegetation. Other areas on the subject site were analyzed for their suitability for the proposed compound and monopole. It was determined that no other areas were as suitable as the selected site. No other area on the site would provide the natural buffers or visual screening, adequate room for construction, compact limit of disturbance, or ease of access for long term maintenance and emergency responders.

- O. All applications shall include information as to how the applicant has addressed the visual impact of the tower on all county designated preservation areas, such as: rural legacy areas, agricultural preservation areas, critical farms, Monocacy Scenic River, Appalachian Trail, historic sites and sites eligible for designation.

The Applicant stated that the proposed Communications Tower has no impact on rural legacy areas, agricultural preservation areas, critical farms, Monocacy scenic river, or the Appalachian Trail, and therefore the application is not required to include information as to how the Applicant has addressed the visual impact of the Tower on all such county designated preservation areas. With regard to historic sites and sites eligible for designation, there are no structures or properties listed on the National Register of Historic Places within 1 mile of the monopole: Highland Lodge, located at 5519 Old National Pike is approximately 1.08 miles away and a National Road Milestone on Old National Pike is approximately 1.12 miles away. The Property is not within an Agricultural Preservation or Rural Legacy Area, and is at least 4 miles from the Monocacy River and National Battlefield. The Appalachian Trail is approximately 8.5 miles to the west, and will not be impacted by the proposed Facility. There are no mapped historic features impacted by the project, and no County-designated Historic Sites or Scenic Byways near the Property. Only one (1) of several properties in the area that have been designated as eligible for historic status by the Maryland Inventory of Historic Properties has actually been recommended for historic status: The Lily Homestead, which is located on the north side of Jefferson Pike. As shown in the photograph included in the Land

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Planning Report, the Lily Homestead sits in a wooded area and any view of the subject site is screened by these existing trees and hedgerows.

- P. Towers may be permitted within the Mineral Mining (MM) and non-residential Mixed Use Development (MXD) floating zones with the approval of the Planning Commission. Towers shall not be permitted within residential, PUD or residential MXD Districts.

The Applicant stated that the proposed Tower would not be located within the Mineral Mining (MM), nonresidential Mixed Use Development (MXD) floating zones, residential, PUD or residential MXD Districts.

- Q. Communications towers in existence on the effective date of this ordinance (Ord. 99-14-241) shall not be required to comply with these provisions, except in the event they increase the height; provided, however, that any such tower which has ceased to be used for communications purposes for a period of 12 consecutive months, must comply with the existing requirements of the zone in which it is located before such tower may be used for telecommunication purposes. For purposes of this subsection (Q), the proposed installation of 1 or more antennae on a tower which has ceased to be used for communications purposes for a period of 12 consecutive months shall be deemed a use which must comply with the existing requirements of the zone in which it is located, and shall not be treated as an accessory use pursuant to § [1-19-8.205.2](#).

The Applicant stated that the proposed Communications Tower has not been constructed and therefore was not in existence on the effective date of the ordinance (Ord. 99-14-241).

- R. Except as provided in § [1-19-8.332](#)(F) setbacks for communications towers shall be as follows.

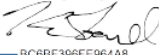
The Applicant stated that the proposed Communications Tower meets the setbacks for communications towers as provided in § 1-19-8.332(F). The proposed Tower is situated 471' from the property line in all directions, and sits at least 850 feet across I-70 from the closest existing residence. These distances exceed the 1 foot for every foot of tower height setback, the minimum 300 feet from the nearest residence setback, and fall zone requirements.


At the Meeting, the Board made the following additional findings of fact:

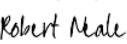
- Each member of the Board who was present at the Meeting conducted an onsite inspection of the Property prior to September 24, 2020.
- The Applicant was advised that they are bound by all exhibits and testimony presented at the Meeting.
- Two members of the public called in and testified with questions regarding the maintenance and ownership of the access road.

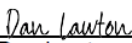
After hearing the testimony and considering all the evidence and applying that evidence to the appropriate County Code requirements, specifically Sections 1-19-3.210, Special Exceptions, 1-19-8.332. Communication Towers Communication Towers in RC and A Districts and 1-19-8.420 Communication Towers, the Board of Appeal finds that the Applicant meets the requirements for the requested Special Exception for a Communications Tower and monopole up to 110' high. Therefore, on a motion by Mr. Neale, and seconded by Mr. Bohrer, the Board voted (5-0) to grant the Applicant's request.

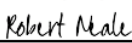
Adopted by the Board of Appeals on the 28th day of October, 2020.

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Kenneth Farrell, Chairman

DocuSigned by:

Andrew Brown, Vice Chairman

DocuSigned by:

Robert Neale, Secretary

DocuSigned by:

Dan Lawton, Member

DocuSigned by:

Shannon Bohrer, Member

Ordinance Section 1-19-3.220 (G)

A decision of the Board of Appeals granting a variance will be void 5 years from date of approval by the Board of Appeals unless the use is established, a building permit is issued, construction has begun, or final site development plan approval has been received in accordance with the terms of the decision. Upon written request submitted to the Zoning Administrator no later than 1 month prior to the expiration date and for good cause shown by the Applicant, a 1 time extension may be granted by the Zoning Administrator for a period not to exceed 6 months.

Exhibit 2: SITE AERIAL



The site was relocated to avoid additional environmental impacts

Exhibit 3: SITE PHOTOS: EXISTING LANE AND LOOKING NORTH



